"The Law Times" is in favor of abolishing "middle-men in legal procedure," and declares that "no one who has had any experience of the working of the present system can shut his eyes to the fact that it entails unnecessary expense upon the suitor."

"The Law Journal" of Jan. 21 contains an *obiter dictum* which treats the address as an attack upon the bar, and declares, that "an institution like the bar seems likely to stand for some time to come the kind of rhetoric with which it is assailed, whether or not from the tongues of them of its own household."

"The Irish Law Times" is responsible for the following statement: "A bill will be introduced next session in connection with the fusion of the two branches of the legal profession. The bill was introduced last year, but too late to be read a second time. It is called the 'Suitor's Relief Bill,' and is backed by eight Conservative members, and provides that every suitor shall be heard either by barrister or solicitor before any tribunal, and that a solicitor may practise as a barrister, and *vice versa*."

CORRESPONDENCE.

THE JUSTICE OF PRIVATE PROPERTY IN LAND.

CAMBRIDGE, MASS.

IN the January number of the HARVARD LAW REVIEW Mr. Samuel B. Clarke reviews, from a judicial stand-point, Henry George's doctrine concerning land, reaching the conclusion that the ownership of land by private individuals is unjust. The object of this paper is to test the soundness of the reasoning through which this conclusion is reached.

Mr. George's primary propositions, as expressed by Mr. Clarke, are not to be disputed. Few will attempt to deny that "each human being, as against all others, and, so far as interference with him by them is concerned, is entitled to himself, to his life, to his liberty, to the fruits of his exertions, to the pursuit of happiness, subject only to the equal correlative rights of every other human being." Our laws recognize the right of an unborn babe to life, and seek to protect it from violence, even though it be the parents who threaten it. To protect life, liberty, and property, laws are framed, and that such laws may be made and enforced, government is necessary. As a government succeeds or fails in securing to those under its jurisdiction these fundamental rights, it is strong or weak; and, to a marked failure, the natural sequence is a revolution. When an institution is found to be repugnant to the natural rights of individuals, the government or the people, who are the source of government, may abolish that institution. If private property in land is adverse to natural rights the American people, who have for this reason already abolished property in slaves, may abolish property in land. Starting, then, from this common ground, let us follow George's chain of argument, as Mr. Clarke gives it, and see if it contains no unsound link.

Concisely given, the reasoning is as follows: It is agreed that all men have equal rights to life. A right to life means nothing if it does

not carry with it a right to the means whereby alone life can be sustained. Land is, literally, indispensable to life, — it is man's foothold, the only source of the means of nourishment and of comfort, the basis of all that man has power to form from matter. Since every man, then, has a right to life, he has a right to land; and since the rights of all men to life are equal, their rights to land are equal. A system, therefore, which fails to distribute the land equally among the inhabitants is wrong, and should be overthrown.

Where, in this argument, does the fallacy lie? Is it not in the word "*equal*"? What do we mean by saying that all men have *equal* rights to life? One child may be born strong and healthy, another weak and sickly; and in no way is their condition due to themselves. Do we mean that the weak child is, of right, entitled to a portion of the other's vitality? No, not that; we mean that each child has the right to keep whatever of life is *his;* and the strong child has no greater right to his larger share of life than the weak child has to his smaller portion. In the course of years their positions may be reversed; but, at all times, they have *equal rights* to their own. In the same way the *portion* of property to which each child is entitled at birth may be greater or smaller, but the *rights* of each to his own are equal; and in this sense it is true that all men have equal rights to land as well as to everything else that this world contains.

But George and his followers, while they use the word *equal* in the above sense when applied to rights to life, and even when applied to rights to commodities, give the word a different meaning when applied to rights to land: their proposition is, that since the *rights* of all men to live are *equal*, therefore all men are entitled to *equal portions* of the earth's surface. The Communists make the same mistake, but carry their argument to its logical conclusion, saying that since all men have equal rights to life and happiness, all men are entitled to equal shares of everything in the world necessary for, or conducive to, the attainment of these ends. George and the Communists are alike illogical, but the Communists are at least consistent. Let us examine the grounds for distinction that enable Mr. Clarke to hold with George, that while absolute property in land is unjust, absolute property in things other than land is justifiable.

That land is essential to life offers no ground for a discrimination, for land alone will not support life. Food, and, in this climate, shelter and clothing, are equally indispensable; yet George does not hold that these should be equally divided. "Land," says Mr. Clarke, "can be acquired by the exercise of one's natural faculties as readily and effectually as can any other physical thing. . . . In neither case is any *matter* created, that being beyond man's power to do. In both cases possession is taken and *form* is changed by brain-directed labor, and nothing else is done or happens." What, then, is the distinction? The reducing to possession, says Mr. Clarke, will not always give a good title, for a human being may be reduced to possession, and it is admitted that slavery is unjust. But the reducing of another's person or property to possession is clearly a violation of the other's rights. Possession will give a good title when no better title can be set up against it, and wherein does the possession of an unused block of stone give a better title as against the public than the possession of an unused acre of land? The appropriation of land interferes with the exertion of one's natural powers, says Mr. Clarke, which is not the case with the appro-

priation of other things. When the land in a given community is entirely taken up by others, a landless man cannot do anything *individually*. Let us see how it would be if he had land and nothing else. He could build no fire, for he would be without fuel. If Mr. Clarke says that fuel would be part of the land, he must say that private property in fuel is unjust. He could obtain no food, shelter, or clothing, — unless he were to dig a hole with his fingers and crawl into it. He might, indeed, exchange his land for other things, but that would not be acting *individually*. But, Mr. Clarke says, the appropriation of land interferes with the exertion of one's natural powers, while the appropriation of other things does not, because the supply of land is limited, while to the supply of other things there is no limit, or no known limit, if the land, which is the source of supply, be not monopolized. If Mr. Clarke had said "limited" instead of "monopolized" his sentence would have been true, though axiomatic. As it is now, Mr. Clarke asserts that an unlimited amount of products can be obtained from a limited source of supply. The State of Rhode Island, if the land were not monopolized, could feed the world! Mr. Clarke admits that it is beyond man's power to create matter. That being so, what can be more of a truism than the fact that if the supply of land be limited, the supply of the products of that land will be limited also? Surely in this there can be no distinction between land and things other than land. Nor can such a distinction be drawn. The truth is that all this world contains is, or once has been, land. The stones and bricks which compose our buildings we called land when they lay in the quarries and clay beds. The coal in the stove, and the iron of which the stove is made, were land when in the mines. The wood of the table, the linen that covers it, and the bread, fruit, and vegetables, as well as the dishes from which we eat, were all called land within a longer or shorter period of time. At what moment did they cease to be land and become the rightful subjects of property? When first separated from the soil? Henry George himself characterizes the lawyer's distinction of things movable and things immovable as "unphilosophical." "The real and natural distinction," says he,[1] "is between things which are the produce of labor, and things which are the gratuitous offerings of nature." But labor can create nothing, and land upon which labor has been expended in clearing and cultivation is as much the "produce of labor" as the stones that make up a church. In each case labor has been expended in changing the form of the "gratuitous offerings of nature" and nothing more has happened. Why, then, should not the land be as properly the subject of private property as the stones?

But to say that all men are not entitled to equal portions of the earth's surface is not to say that there are some men who are not entitled to land at all, and should therefore be cast into the sea, any more than to say that because all men are not entitled to equal shares of the earth's produce there are some men who should be left to starve. The right to property is subordinate to the right to life, and as, when a city is besieged, those who have more provisions must share with those who are not so well supplied; so when the supply of land becomes so scant that the right to life comes into conflict with the right to property, the inferior right must yield. The following illustration will, perhaps, better show my meaning: A man has ordinarily the right to keep

[1] Progress and Poverty, Book VII., c. 1.

trespassers from his premises. But suppose a land-owner's property is on a river-bank, and a drowning man, floating down the river, tries to make a landing. Here would be an instance of a smaller right yielding to a greater, and a land-owner who would, under these circumstances, push back the drowning man into the river, would become a murderer. And as every man has a right to life, so he has a right to the essentials of life, limited by the corresponding rights of others. With every child there is born a trust, and the child's parents or relatives are its natural trustees; but if the child is a foundling, the trust becomes binding on society, and society through its proper officers must assume the trust. Every child thus has a right *in personam* as well as a right *in rem;* but its trust estate may be anything from the checked apron and homely food of the orphan asylum, to the environment of luxury that surrounds the cradle of the infant millionnaire. Such trusts determine when the child becomes of a proper age to earn its own living, but revive if the capacity for labor and the means of subsistence are removed. Our public institutions, whose object is to provide for those who cannot provide for themselves, are fast losing in the public mind the character of State charities, and assuming that of State trusts.

My object having been to defend only the *justice* of private property in land, I will not follow Mr. Clarke into that portion of his article which he devotes to its *expediency*. One thing seems certain: that if, as is expected by the advocates of George's system, all the land now used and much of the land now unused would be taken up and cultivated under that system, and if the government would protect its tenants, as it would be bound to do, in the enjoyment of their rights to the exclusive use of the land for which they would have to pay, a landless man would be in the same predicament in which he now finds himself, and might still go "from the Atlantic to far beyond the Mississippi river, and from the Pacific to the great mountains," without finding a place where he could legally dig a hole in the ground for shelter, or build a fire of sticks for warmth. Mr. Clarke's faith in the system must indeed be great if he can believe that any legislation that neither increases the area of the land, nor diminishes the number of the inhabitants, can place all the people of this country, "so far as abundance of natural opportunities is concerned, where their predecessors stood sixty or eighty years ago."

Land, as well as every other species of property, is subject to abuse; and the abuses to which the land is peculiarly liable, so clearly pointed out by Mr. Clarke, have already been noticed, and, in a measure, restricted by such legislation as the Statutes of Mortmain and Limitations, and the abolition of estates tail. The laws regulating the use of land are probably no nearer the standard of perfection than are the laws in any other department, and much improvement may probably yet be effected by means of prudent and conservative legislation. But is even the abuse of land worse than the abuse of other forms of property; and is the spectacle of one man owning 75,000 acres of rich land more deplorable than that of another man holding enough personal property to buy him out?

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